

Internal Revenue Service
memorandum

date: DEC 18 1991

to: William A. Goss
Regional Counsel, Southeast Region

from: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations)

subject: Request for Technical Assistance - [REDACTED]

This is in reply to your request for technical assistance dated October 8, 1991, concerning the status for federal employment tax purposes, of individuals who sell their blood. The following four issues were raised:

1. Whether blood donors are engaged in a trade or business for self-employment tax purposes.
2. Whether blood donors can be divided into two categories: those who are engaged in a trade or business and those who are not.
3. Whether, as a policy matter, the self-employment tax issue should be raised.
4. Whether specific blood donors are common law employees of [REDACTED] for purposes of the federal employment taxes.

You also state that Examination and the Service Centers would like a bright line test for determining whether a blood donor is in a trade or business for self-employment tax purposes, and if the individuals for whom the Forms SS-8 were furnished are employees of [REDACTED].

The question of whether an individual is an independent contractor or an employee is normally one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Section 3121-(d)(2) of the Internal Revenue Code who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

Guides for determining the existence of a worker's status are found in three substantially similar sections of the Federal Employment Tax Regulations, namely, sections 31.3121-(d)-1, 31.3306(i)-1, 31.3401(c)-1 relating to the Federal

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Insurance Contributions Act, the Federal Unemployment Tax Act, and federal income tax withholding, respectively.

In determining whether an individual is an employee under the common law rules, we will normally consider the so-called 20 common law factors. See Rev. Rul. 87-41, 1987-1, C.B. 296. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

In response to the fourth issue, while there is not sufficient information available to make a definitive judgment, it appears that an employment relationship does not exist; and, therefore, the remuneration is not wages for FICA, FUTA, and federal income tax withholding purposes. It does not appear that an employment relationship was intended and [REDACTED] does not have the requisite direction and control over the individual blood donors. Nevertheless, we prefer not to decide at the present moment whether a blood donor could be an employee under appropriate circumstances.

With regard to issues 1 and 2, we agree with your analysis, but, as you well understand, we are unable to provide a bright line test for making a determination whether the blood donors are engaged in a trade or business for SECA purposes. As in Commonwealth v. Groetzinger, 87-1 USTC 9191 (S.Ct. 1987) and Ditunno v. Commissioner, 80 T.C. 362, (1983), a facts and circumstances test must be utilized in each case.

You summarize the four factors that might be considered in determining whether a blood donor is engaged in a trade or business for SECA purposes. While the filing of a Schedule C is indicative of what the taxpayer believes his status to be, we do not think it is conclusive by any means.

As to issue 3, we see no reason why the self-employment tax issue should not be raised in appropriate cases. Certainly, Green v. Commissioner, 74 T.C. 1229 (1980), provides guidelines for determining whether a blood donor may be engaged in a trade or business for SECA purposes. We think that when justified, a blood donor should be subject to SECA taxes.

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taxpayers involved, and its use within the IRS should be limited to those with a need to review the document in relation to the subject matter or case discussed herein. This document also is tax information of the instant taxpayer which is subject to I.R.C. section 6103.

If we can be of any further assistance in this matter, you may call Ronald L. Moore or Philip M. Corn of my staff at FTS 566-4748.

NANCY J. MARKS
Acting Assistant Chief Counsel

(Signed) Ronald L. Moore

By:

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